

May X, 2014

The Honorable Carolyn W. Colvin
Acting Commissioner
Social Security Administration
6401 Security Boulevard
Baltimore, MD 21235

Dear Ms. Colvin:

We write to urge the Social Security Administration (SSA) to take all necessary steps to end the unconstitutional discrimination currently preventing many same-sex couples from obtaining the Social Security spousal benefits they have earned.

In *United States v. Windsor*, the Supreme Court ruled Section 3 of the Defense of Marriage Act—defining marriage as a union between one man and one woman—unconstitutional under the Due Process Clause of the Fifth Amendment. Following the ruling, the SSA released a statement encouraging individuals in same-sex marriages and other legal same-sex relationships to apply for benefits.

While we appreciate that SSA is approving claims for couples and surviving spouses residing in states, at the time of application, that recognize marriage for same-sex couples, this approach leaves out many who have worked to earn benefits for their spouses and families. Same-sex couples in civil unions and registered domestic partnerships, as well as married same-sex couples living in states that do not recognize same-sex marriages, have their applications held, effectively denying them the spouse-based Social Security benefits they have earned.

This discrimination is simply unacceptable. Although Social Security benefits are modest—for example, the average survivor's benefit is just \$1,221 per month—nearly two-thirds of elderly beneficiaries rely on Social Security for the majority of their income. For more than one-third of elderly beneficiaries, Social Security provides at least 90 percent of their income. This income is especially important for same-sex couples. According to the Williams Institute at UCLA, lesbians who are 65 or older are twice as likely to be poor as heterosexual married couples. The same report indicates that gay male couples over 65 also have higher poverty rates than their heterosexual counterparts.

Furthermore, it is also important to note that the harm from this discriminatory policy extends beyond the same-sex couples who are denied the benefits they have earned. For example, for married same-sex couples currently living in states that recognize marriage equality, their fundamental freedom to choose to live anywhere in the United States—to accept a promotion or to be near family—is unfairly restricted by the threat of denied benefits. Should they change their residence before applying for benefits, they risk losing the Social Security protections they have earned.

SSA is required to base determinations for spouse-based benefits on how “the courts of the State” where the applicant resides would assess spousal status. However, SSA also recognizes spousal status if the applicant is “deemed” a spouse by SSA in circumstances where the applicant “would, under the laws applied by such courts in determining the devolution of intestate personal property, have the same status with respect to the taking of such property as a wife, husband, widow or widower of such insured individual.” As extensive case law has demonstrated, states have frequently recognized particular attributes of marital relationships, such as the right to inherit property, even when the union is explicitly prohibited by state law.

Additionally, *United States v. Windsor* confirmed that equal protection principles compel the federal government to respect the valid marriages of same-sex couples. In light of this ruling, SSA has the responsibility to rely on its own assessment of how to properly uphold the constitutional rights of those married to someone of the same sex. Numerous federal district courts have ruled that a state’s refusal to respect validly certified out-of-state marriages of same-sex couples is in violation of the equal protection principles upheld in *United States v. Windsor*.

Based upon our examination of Social Security statutes and court precedent, we believe it is clear that same-sex couples joined in marriage, civil unions and registered domestic partnerships should be deemed eligible for spouse-based benefits, regardless of where they live. While it is disappointing that it is only due to the failure of Congress to act upon the Respect for Marriage Act that these extraordinary efforts are necessary, we urge SSA to take all steps within its authority to end discrimination regarding the approval of spouse-based benefits.

We appreciate the extensive and ongoing effort that you and your agency have undertaken to reduce discrimination against same-sex couples, and we thank you for your consideration and your attention to this important issue.

Sincerely,

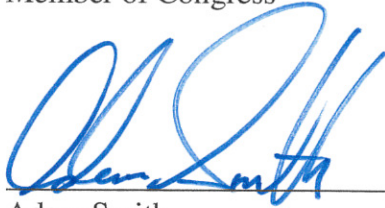
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